

FILED

APR - 6 2015

CLERK, U.S. DISTRICT COURT
By _____
Deputy _____

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**CRAIG PITTMAN and
KELLY PITTMAN,**

Plaintiffs,

v.

NO. 3:14-cv-3852-M-BF

**SETERUS, INC., FEDERAL NATIONAL
MORTGAGE ASSOCIATION, KYANITE
SERVICES, INC., MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., and FIRST MANGUS FINANCIAL
CORP.,**

Defendants.

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The District Court referred this removed civil action arising out of foreclosure proceedings initiated against real property located in Dallas County, Texas to the United States Magistrate Judge for pretrial management. Defendants Federal National Mortgage Association, Kyanite Services, Inc., Mortgage Electronic Registration Systems, Inc., and Seterus, Inc. filed a joint Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiffs Craig and Kelly Pittman, who are proceeding *pro se*, failed to timely file a response to Defendants' motion to dismiss. In a hearing on another matter in this case held on February 27, 2015, Plaintiffs requested and were granted an extension until March 27, 2015 to file a response to the motion to dismiss or an amended complaint.

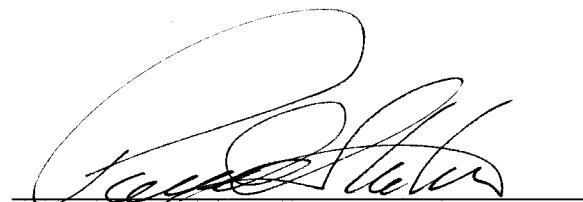
On March 27, Plaintiffs filed an amended complaint. Even assuming Defendants' motion -- which is addressed to the Plaintiffs' original state court petition -- has merit, Plaintiffs have

superseded that pleading by filing their amended complaint. *See King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). Therefore, Defendants' motion to dismiss should be denied as moot. *See, e.g., Thomas v. Deutsche Bank Nat'l Trust Co.*, No. 3:12-CV-5014-M-BF 2013 WL 673988, at *1 (N.D. Tex. Jan. 21, 2013), *rec. adopted*, 2013 WL 673983 (N.D. Tex. Feb. 25, 2013) (denying as moot motion to dismiss after plaintiff filed amended complaint); *Mangum v. United Parcel Servs.*, No. 3:09-CV-0385-D, 2009 WL 2700217, at *1 (N.D. Tex. Aug. 26, 2009) (same).

Recommendation

In view of the filing of Plaintiffs' Amended Complaint, the court recommends that Defendants' Motion to Dismiss (Doc. 12) be DENIED as moot.

SO RECOMMENDED, April 6, 2015.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a true copy of these findings, conclusions, and recommendation on the parties. Pursuant to Title 28, United States Code, section 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must serve and file written objections within fourteen days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory, or general objections. A party's failure to file such written objections to these proposed findings, conclusions, and recommendation shall bar that party from a de novo determination by the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, any failure to file written objections to the proposed findings, conclusions, and recommendation within fourteen days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).